CF0000062663

(02)

Division Bench (riminal)

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR:

CRIMINAL APPEAL NO. 2985 OF 1999:

APPELLANT : BIRENDRA VERMA,
Son of Firtu Verma,
Age 26 years,
R/o Village Funda, P.S.Patan,
District DURG (M.P): IN JAIL

-VERSUS-

RESPONDENT : THE STATE OF MADHYA PRADESH,
Through P.S.Patan, District DURG (M.P):

CRIMINAL APPEAL UNDER SECTION 374 OF THE CODE OF CRIMINAL PROCEDURE :

(29) A.F.R.
5.10.05

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.2985/1999

Birendra Verma

-Versus-

State of Madhya Pradesh (Now Chhattisgarh)

Judgment for consideration

Sd/-
Dilip Raosaheb
Deshmukh
Judge

Hon'ble Justice Shri L.C. Bhadoo

Sd/-
L.C.BHADOO
Judge

Post for: 5/10/2005

Sd/-
Judge
5/10/2005

(30)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.2985/1999

Birendra Verma

-Versus-

State of Madhya Pradesh (Now Chhattisgarh)

CORAM: HON'BLE SHRI L.C. BHADOO,
HON'BLE SHRI DILIP RAOSAHEB DESHMUKH, JJ

Appellant by Shri Abhay Tiwari, Advocate.
State by Shri Devesh Verma, Panel Lawyer.

JUDGMENT

(Delivered on 05 /10 /2005)

Per Dilip Raosaheb Deshmukh, J.

1. This appeal is directed against the judgment dated 15.10.99 delivered in Sessions Case No. 209/99 by Shri A.K. Chaturvedi, Vth Additional Sessions Judge, Durg whereby the appellant was convicted U/S 302 of the Indian Penal Code for committing murder of his wife Revati Bai in the intervening night of 28th/29th of April, 1999 in village Funda, P.S. Patan and was sentenced to undergo imprisonment for life and a fine of Rs. 1,000/- and in default of payment of fine to undergo simple imprisonment for 6 months.

2. It is not disputed that deceased Revati Bai was the wife of the appellant. It is also not disputed that in the intervening night of 28th/29th of April, death of

(31)

Revati Bai was caused due to strangulation by a rope. Admittedly, the appellant had, on the night of the occurrence, gone to Navagoan to attend a wedding at the place of Than Singh, P.W. 3. It is also not disputed that the appellant had, in the intervening night of 28th/29th of April, 1999 gone to the house of Balwant Verma, P.W.4 late at night and had slept in his house. Derha Ram, P.W. 7 is the father-in-law of the appellant.

3. Briefly stated the prosecution story is that in the intervening night of 28th/29th of April, 1999, the appellant after returning from the wedding at Than Singh Yadav's (P.W.3) place, committed murder of his wife Revati Bai by strangulating her by a rope and *'lungi'*. Thereafter, the appellant scattered the articles in the house all over to make it look like a case of theft, dug a pit in the field near the Devada canal and hid Rs. 2,800/- therein. He thereafter went to the house of Balwant Verma P.W. 4 and slept there. In the morning of 30th April, 1999, the appellant returned home and raised hue and cry that his wife was dead. Cholan Das, P.W. 1, Arti Das, P.W. 2 went there and saw that Revati Bai was dead, a rope and a piece of cloth was tied around her neck. Cholan Das, P.W.1 lodged F.I.R in P.S. Patan on 29.4.99 at 10.30 a.m. Investigating Officer, R.K. Joshi, P.W. 8 reached village Funda and prepared inquest memo vide Ex. P-7 and registered merg intimation vide Ex. P-8. The body of Revati Bai was sent for postmortem. Dr. Lal

(32)

Mohammad, P.W. 9 found that the face of the deceased was cyanosed, eyes were closed and tongue was protruding between teeth. There was a ligature mark all around the neck by *'lungi'* with knot on right side and also another ligature mark around neck by rope with knot on left side. Deep ligature casticised mark of rope was present all around the neck. There was a swelling on the left parietal area 4x5 cms on scalp, a haematoma 10c.m. x 6c.m with clot was present on the scalp, middle parietal haematoma 6x3 c.m under scalp and another soft ligature over the thyroid and a ligature cut from left side was present. Vide report Ex. P-12, Dr. Lal Mohammad opined that the death of Revati Bai was caused due to Asphyxia as a result of strangulation. Sub-Inspector R.K. Joshi, P.W. 8 during investigation recorded the memorandum of appellant vide Ex. P-3 on 30.4.99 in village Hunda and recovered Rs. 2,800/- from beneath the agricultural field near Devada canal. After completion of investigation, the appellant was prosecuted U/S 302 of the I.P.C. The appellant abjured his guilt, pleaded innocence and led no evidence in defence.

4. The prosecution examined as many as 10 witnesses. The Trial Judge, relying upon the circumstantial evidence of the recovery of Rs. 2,800/- at the instance of the appellant from under the field and the probability emerging from the evidence of Than Singh, P.W. 3 and Balvant Verma, P.W. 4 that the accused/appellant before going to the house of

(33)

Balvant Verma P.W 4 had gone to his house and committed murder of his wife, convicted the appellant U/S 302 of I.P.C. and sentenced him as aforesaid.

5. Learned Counsel for the appellant has contended that the case rests upon circumstantial evidence of a very weak nature and the evidence led by the prosecution falls short of the requisite standard of proof required for establishing the guilt in criminal cases on the basis of circumstantial evidence. The evidence of recovery of Rs. 2,800/- at the instance of the accused/appellant does not conclusively establish the guilt of the appellant beyond reasonable doubt. On the other hand, Learned Counsel for the State argued in support of the impugned judgment.

6. We have considered the rival contentions and have also gone through the record of the Sessions Trial No. 209/99. The case of the prosecution rests solely on circumstantial evidence. The law relating to appreciation of circumstantial evidence has been settled by the Apex Court in the case of Dhananjoy Chatterjee Vs. State of W.B. reported in **(1994) 2 SCC 220**, which is as under:

> "In a case based on circumstantial evidence, the circumstances from which the conclusion of guilt is to be drawn have not only to be fully established but also that all the circumstances so established should be of a conclusive nature and consistent only with the hypothesis of the guilt of the accused. Those circumstances should not be capable of being explained

(34)

> by any other hypothesis except the guilt of the accused and the chain of the evidence must be so complete as not to leave any reasonable ground for the belief consistent with the innocence of the accused. It needs no reminder that legally established circumstances and not merely indignation of the court can form the basis of conviction and the more serious the crime, the greater should be the care taken to scrutinize the evidence lest suspicion takes the place of proof."

7. In the light of the law laid down by the Apex Court, we have, therefore, to ascertain whether the evidence led by the prosecution fulfils the standard of proof required for establishing the guilt of the appellant. Upon scanning the evidence led by the prosecution, we find that Derha Ram, P.W. 7 who is the father of the deceased stated that Revati Bai used to tell him that her husband used to beat her often. He has further narrated that Revati Bai had told him that Birendra often used to fight with her and used to say that he would kill her some day. Cholan Das, P.W. 1 has also stated in cross-examination para 5 that the appellant Birendra did not like his wife Revati Bai and used to often beat her. Sahasram P.W. 6 also testified that 3-4 years prior to the occurrence the appellant had ousted Revati from the house after a quarrel whereafter Revati lived at her maternal home for about one year. This witness has disclosed that the reason for this was that the appellant did not like Revati

(35)

Bai. Thus, it has emerged from the unrebutted testimony of the above mentioned witnesses that the appellant had the motive to kill his wife Revati Bai.

8. Balwant Verma, P.W. 4 has narrated that on the night of 28.4.99, while he was sleeping, the appellant came to his house and slept there. This has been admitted by the appellant in reply to question No. 6 & 8 in his examination U/S 313 of the Cr.P.C. No explanation, whatsoever, has been offered by the appellant for sleeping at the house of Balvant Verma. The appellant had absolutely no reason to go to the house of Balvant Verma on the night of occurrence for sleeping. Cholan Das P.W. 1 has stated that the appellant came to his house on the morning of 29.4.99 and told him that his wife was muttering (हड़बड़ा रही थी) whereupon he went with appellant to his house but saw that Revati Bai was lying dead on the cot with a piece of rope tied across her neck. Cholan Das P.W. 1 has also stated that he questioned the appellant that Revati Bai was already dead and how he was saying that she was muttering. The testimony of Balwant Verma also shows that the appellant was not the first person to know about the death of his wife and some person from the village had come to his house to tell him that somebody had killed the wife of the appellant. Upon this, he told the appellant that he should go to the house since his daughter was ill. In this light, it appears that the statement made by the

appellant to Cholan Das P.W. 1 that his wife Revati Bai was muttering was completely false since he knew that she was already dead.

9. Arti Das P.W. 2 has narrated that on going to the house of the appellant he saw that Revati Bai was lying dead on the cot with a plastic rope tide across her neck and a piece of *'lungi'* near her mouth and that the articles in the house were all scattered here and there. Balwant Verma P.W. 4 has also corroborated this and has further said it appeared as if somebody had ransacked the house. Sub Inspector R.K. Joshi P.W. 8 has in para 4 stated that the appellant had, on being questioned said that he had hid Rs. 2,800/- in the field near the canal and he had seized the said amount of Rs. 2,800/- at the instance of the appellant from the said field. Arti Das P.W. 2 has fully corroborated the above. There is nothing to indicate that the appellant had lodged any report about any theft in his house on the day of occurrence. The recovery of Rs. 2,800/- at the instance of the appellant also clearly shows the guilty intention of the appellant. It is apparent that while throwing the articles here and there inside his house, and the money missing he wanted to make it look like a case of theft and had deliberately hid Rs. 2,800/- in the field so that while the money would be found missing from the house, it would be safe there. The accused wanted it to appear that somebody had killed Revati Bai while committing theft from the house.

(37)

10. A question was asked to Arti Das P.W. 2 in para 6 of cross-examination by the defence as to whether the appellant had made extra judicial confession in front of his house at night that he had killed Revati Bai. Answering to this question, Arti Das P.W. 2 has stated that it is true that the appellant Birendra had made an extra judicial confession at 12.00 in the night in front of his house that he had killed Revati Bai. This has not been rebutted in further cross examination.

11. Balwant Verma P.W. 4 has in para 2 stated that after having dinner, he slept and while he had completed a part of the sleep, the appellant came to his house, woke him up and slept with him on the same cot. This clearly goes to show that after returning from the house of Than Singh P.W. 3 at about 11.45 p.m. the appellant went to his house, strangulated Revati Bai with the help of a rope and a *'lungi'*. After killing Revati Bai, the appellant went to the house of Balvant Verma P.W. 4 and slept with him. In the morning someone from the village came to the house of Balvant Verma to inform that Revati Bai had been killed. Upon receiving information the appellant went to Cholan Das P.W. 1 and falsely told him that his wife was muttering whereas he actually knew that Revati Bai was dead.

(28)

12. Thus, the following links in the chain of circumstantial evidence have been fully established by the prosecution in this case.

i) That, the appellant had the motive to commit murder of Revati Bai.

ii) That, Revati Bai had died a homicidal death due to throttling in the intervening night of 28th /29th April, 1999.

iii) The appellant had made an extra judicial confession before Arti Das P.W. 2 about having killed Revati Bai.

iv) No explanation has been offered by the appellant as to why after returning from the house of Than Singh P.W. 3, he went to the house of Balvant Verma late at night to sleep there.

v) There is also no explanation as to what was the appellant doing at home after returning from the house of Than Singh Yadav.

vi) There is no explanation as to why the appellant hid the amount of Rs. 2,800/- inside the field near the canal.

vii) No report of theft in the house was lodged by the appellant.

viii) The appellant knowing that Revati Bai was dead falsely informed Cholan Das that Revati Bai was muttering.

(39)

13. Considering the above mentioned fully established links in the chain of circumstantial evidence led by the prosecution, we are of the considered opinion that the above mentioned fully established links complete the chain of circumstantial evidence against the appellant and conclusively excludes the hypothesis of the innocence of the appellant and are wholly consistent with the hypothesis of the guilt of the appellant. Thus, it is established beyond doubt that the appellant had committed murder of Revati Bai in the intervening night of 28th /29th April, 1999. Thus, the trial Judge has rightly convicted the appellant U/S 302 of the I.P.C. for committing the murder of Revati Bai in the intervening night of 28th / 29th April, 1999.

14. In the result, we find no substance in this appeal which is accordingly dismissed.

Sd/-
L.C.BHADOO
Judge

Sd/-
Dilip Raosaheb
Deshmukh
Judge